

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.41966 of 2021

Kiranbala Swain

....

Petitioner

Mr. Premananda Mohanty, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. B. Mohanty,

Standing Counsel S. & M.E.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.01.2022

Order No.

01. 1. This matter is taken up through Video Conferencing mode.
2. Heard Mr. Premananda Mohanty, learned counsel for the Petitioner and Mr. B. Mohanty, learned Standing Counsel appearing for the School and Mass Education Department.
3. The present writ petition has been filed by the Petitioner seeking for a direction to the Opposite Parties to extend the benefit of antedated promotion to the post of Jr.S.E.S. as has been done in many similar other cases and further the petitioner has prayed for a direction to the authorities to calculate and pay the differential arrear dues payable to the Petitioner on such antedated promotion to the post of Jr.S.E.S..
4. It is submitted by the learned counsel for the Petitioner that as per Rule 10-A of Orissa Subordinate Education Service Rules, 1972, LSES cadre teachers on completion of three years of service with B.Ed qualification are eligible for promotion to Jr. SES cadre. Further, as per Rule 10(B)(ii) of the said Rule the selection committee shall meet once a year ordinarily during the 1st week of

April and prepare a list of persons eligible for appointment by way of selection under Rule 10-A of the aforesaid rule.

5. It is further submitted by the learned counsel for the Petitioner that following the aforesaid Rule, the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.1673(C) of 1993 and O.A. No.1804 of 1998 had given direction to give the benefits as prayed for by the Petitioner to one Nabin Kumar Khamari and Rabi Narayan Panda. Similarly in O.A.No. **O.A. No.3885(C) of 2012** similar benefit has also been given to ***Pratush Kumar Das***.

6. It is also submitted by the learned counsel for the Petitioner that the orders passed by the learned Tribunal has attained finality as the same has not been challenged before any higher forum. Moreover, the orders passed by the learned Tribunal has also been given effect to by the Government. The Government of Odisha by following the law laid down in the aforesaid two cases has extended similar benefits in numerous other cases.

7. In ***Binod Kumar Singhal vs. Union of India***, reported in **1994(2) SLR 695** it has been decided that departmental promotion committee is required under the instruction to meet every year such selecting persons for promotion on regular basis. Vacancy occurring during the relevant year cannot be clubbed together and as such the zone of consideration cannot be enlarged.

8. Further the learned counsel for the Petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the matter of ***K. Shephard and others vrs. Union of India***, reported in **AIR 1988 S.C. 686** and later judgment in the matter of ***Maharaj Bhatta and another vrs. State of J.K. and others***, reported in **(2008) 9 SCC 24** has laid down the law to the effect that once a decision is rendered by

any court of law and it is implemented by the authorities, such benefits are to be extended to similarly placed persons.

9. It is further submitted by the learned counsel for the Petitioner that keeping in view the aforesaid proposition of law, the Petitioner has filed a representation dated 14.09.2021 under Annexure-4 before the Director, Secondary Education, Orissa, Opposite Party No.2 and the same is pending as of now and submits that the authorities be directed to consider the same in accordance with law within a stipulated period of time.

10. The learned counsel appearing for the School & Mass Education department submits that the matter needs to be examined by the concerned authority whether the Petitioner is entitled to get such benefit or not. However, he further submits that if a direction is given to the authority to consider the case of the Petitioner in accordance with law he will have no objection to that.

11. Having heard learned counsel for the parties and upon perusal of the records and various judgments cited before this Court, this Court disposes of the writ application with a direction to the Opposite Party No.2 to consider the representation of the petitioner in accordance with law and keeping in view the aforesaid analysis of law and shall dispose of the same by passing a speaking and reasoned order within a period of eight weeks from the date of production of certified copy/authenticated copy of this order. The decision so taken shall be communicated to the petitioner within a period of 10 days thereafter.

12. With the aforesaid observation the writ application is disposed of.

13. As the restrictions due to resurgence of COVID -19 situation

are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(A.K. Mohapatra)
Judge

RKS

